

NATURAL RESOURCES CODE  
CHAPTER 89. ABANDONED WELLS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. POLICY. The conservation and development of all the natural resources of this state are declared to be a public right and duty. It is also declared that the protection of water and land of the state against pollution or the escape of oil or gas is in the public interest. In the exercise of the police power of the state, it is necessary and desirable to provide additional means so that wells that are drilled for the exploration, development, or production of oil or gas, or as injection or salt water disposal wells, and that have been abandoned and are leaking salt water, oil, gas, or other deleterious substances into freshwater formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.002. DEFINITIONS. (a) In this chapter:

(1) "Well" means a hole drilled for the purpose of:

- (A) producing oil or gas;
- (B) injecting fluid or gas in the ground in connection with the exploration or production of oil and gas;
- (C) obtaining geological information by taking cores or through seismic operations; or
- (D) producing geothermal energy and associated resources that are subject to the jurisdiction of the Railroad Commission of Texas.

(2) "Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond, letter of credit, or cash deposit under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

(3) "Nonoperator" means a person who owns a working interest in a well at the time the well is required to be plugged pursuant to commission rules and is not an operator as defined in Subdivision (2) of this subsection.

(4) "Commission" means the Railroad Commission of Texas.

(5) "Well-site equipment" means any production-related equipment or materials specific to the well being plugged, including motors, pumps, pump jacks, tanks, tank batteries, separators, compressors, casing, tubing, and rods.

(6) "Lease" means the lease on which a well made the subject of a plugging contract is located.

(7) "Delinquent inactive well" means an unplugged well that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months and for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline.

(8) "Plugging" includes replugging.

(b) The terms operator and nonoperator as defined in this section do not mean a royalty interest owner or an overriding royalty interest owner.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5406, ch. 1002, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 882, Sec. 1, eff.

Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 515, Sec. 1, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 89, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 11, eff. Sept. 1, 2004.

Sec. 89.003. APPLICABILITY. The provisions of this chapter do not alter causes of action arising before August 30, 1965. Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

#### SUBCHAPTER B. DUTY TO PLUG WELLS

Sec. 89.011. DUTY OF OPERATOR. (a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of the plugging.

(b) If useable quality water zones are present, the operator shall verify the placement of the plug at the base of the deepest fresh water zone required to be protected. The well is considered to have been properly plugged only when the verification is satisfactory and meets commission requirements.

(c) If, for the use of the surface owner, the operator of the well plugs the well back to produced fresh water, the duty of the operator to properly plug the well ends only when:

(1) the well has been properly plugged in accordance with commission requirements; and

(2) the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable.

(d) Subsections (b) and (c) apply only to wells plugged on or after the effective date of this Act.

(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such a sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 882, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 89, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 12, eff. Sept. 1, 2001.

Sec. 89.012. DUTY OF NONOPERATOR. If the operator of a well fails to comply with Section 89.011 of this code, each nonoperator is responsible for his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

#### SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 89.041. DETERMINING PROPER PLUGGING. If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.042. COMMISSION ORDER TO PLUG. (a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) Repealed by Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Sec. 89.043. PLUGGING BY COMMISSION. (a) If the commission

determines at a hearing under Section 89.041 of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator nor nonoperator properly plugged the well, and

(A) neither the operator nor nonoperator can be found; or

(B) neither the operator nor nonoperator has assets with which to properly plug the well.

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the commission, through its employees or agents, may direct the operator to take remedial action or to plug the well or may plug or replug the well without holding a hearing under Section 89.041 of this code or giving notice under Subsection (c) of this section.

(c) Not later than the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085;

(3) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs;

(4) the commission has a statutory lien on all well-site equipment under Section 89.083; and

(5) the lien described by Subdivision (4) is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

(d) The operator of a well made the subject of a prior commission final order directing that it be plugged is not entitled to a second hearing under this section.

(e) The commission shall file for record a copy of the notice in the office of the county clerk of the county in which the well is located. The notice filed with the county need not be acknowledged. The copy of the notice filed in the office of the county clerk must contain the section, block, survey, and abstract number, when available to the commission, of the land on which the well is located. The clerk shall record the notice in the real property records of the county. The commission shall not be charged a fee for the filing or recording of the notice. The commission shall furnish a copy of the notice to a holder of a lien on the well or a nonoperator on that person's request. For purposes of title insurance policies issued under authority of Title 11, Insurance Code, this notice is not a notice of enforcement or violation of law, ordinance, or governmental regulation unless the notice contains a legally sufficient description of the specific land on which the well is located.

(f) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (c)(3)(A).

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 515, Sec. 2, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 928, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 29, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 1, eff. May 10, 1999; Acts 2001, 77th Leg.,

ch. 1233, Sec. 13, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 728, Sec. 11.147, eff. Sept. 1, 2005.

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 2005, 79th Leg., ch. 267, Sec. 3, eff. Jan. 1, 2006.

Sec. 89.045. LIABILITY FOR DAMAGES. The commission and its employees and agents, the operator, and the nonoperator are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out this chapter.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.046. PENALTIES AND OTHER RELIEF. The plugging or replugging of a well by the commission does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to plug the well.

Added by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983.

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which the well is issued a permit.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of

the nominated well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

- (1) identify the orphaned well;
- (2) state the name, address, and telephone number of the person;
- (3) state the date the person intends to conduct the surface inspection;
- (4) state the name of at least one representative of the person who will participate in the surface inspection; and
- (5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the well site.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

- (1) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;
- (2) a completed certificate of compliance; and
- (3) a nonrefundable fee in the amount of \$250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

- (1) a nontransferable exemption from severance taxes for all future production from the well as provided by Section 202.060, Tax Code;
- (2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and
- (3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

- (1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed \$500,000. An operator may not receive:

- (1) more than one payment under that subsection for the same well; or
- (2) cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator

has filed with the commission under Section 91.104.

Added by Acts 2005, 79th Leg., ch. 267, Sec. 4, eff. Jan. 1, 2006.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil-field cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

Added by Acts 2005, 79th Leg., ch. 267, Sec. 4, eff. Jan. 1, 2006.

#### SUBCHAPTER D. COSTS OF PLUGGING WELLS

Sec. 89.081. CAUSE OF ACTION FOR DISPROPORTIONATE SHARE OF COST. If an operator or nonoperator owns only a partial interest in the well or oil and gas and the operator or nonoperator pays a larger proportion of the cost of plugging the well than his proportionate interest in the well or oil and gas, he has a cause of action against the other operators and nonoperators for their proportionate shares of the cost of plugging.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.083. FIRST LIEN ON EQUIPMENT; CAUSE OF ACTION IF COMMISSION PLUGS. (a) If a well has not been plugged by the deadline for plugging established by commission rules, the state has a first lien, superior to all other preexisting and subsequent liens and security interests, on the operator's and nonoperator's interests in well-site equipment, in the amount of the total costs of removing well-site equipment from the well, plugging the well, and transporting, storing, and disposing of the well-site equipment.

(b) The lien arises on the date by which the well is required to be plugged under commission rules.

(c) The lien may be foreclosed by judicial action or commission order at any time after notice and an opportunity for a hearing. If notice is mailed under Section 89.043 and if the lien is not previously foreclosed, the lien is foreclosed by operation of law on the 15th day after the date the notice is mailed unless the commission has received a valid and timely request for a hearing before that date. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before foreclosing the lien.

(d) The lien is extinguished if the well is plugged or otherwise brought into compliance in accordance with commission rules by any person authorized to do so before the commission enters into a plugging contract.

(e) The lien is extinguished as to any item of well-site equipment that is lawfully removed by any person other than the operator or a nonoperator pursuant to a lien, lease, judgment, written contract, or security agreement before the commission sends notice under Section 89.043(c). A person may not remove from an inactive well site any equipment necessary to prevent the well from serving as a conduit for the passage of oil, gas, saltwater, oil and

gas wastes, or freshwater from one stratum or formation to another or to the surface or from the surface downward except in the course of plugging in accordance with commission rules.

(f) If the commission plugs a well under Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well and not recovered under Section 89.085 of this code or through reimbursement to the commission.

(g) The cause of action is:

(1) first, against the operator, to be secured by a first lien, superior to all preexisting and subsequent liens and security interests, on the operator's interest in the oil and gas in the land and the fixtures, machinery, and equipment found or used on the land where the well is located; and

(2) second, against a nonoperator at the time the well should have been plugged, to be secured by a lien on the nonoperator's interest in the oil and gas in the land. A nonoperator may be made a party defendant in the suit against the operator.

(h) The commission:

(1) by order may require the operator and any nonoperator to reimburse the commission for all reasonable expenses incurred in plugging a well; or

(2) may request the attorney general to file suit against the operator and any nonoperator to recover those expenses.

(i) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (h)(1).

(j) Money collected in a suit under this section shall be deposited in the state oil-field cleanup fund.

(k) A civil action for reimbursement under this section may be brought in Travis County, the county in which the plugged well is located, or the county in which any defendant resides.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 515, Sec. 3, eff. Jan. 1, 1994; Acts 1999, 76th Leg., ch. 29, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 2, eff. May 10, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 14, eff. Sept. 1, 2001.

Sec. 89.084. MONEY PAID COMMISSION BY PRIVATE PERSON. (a) The commission may accept money from private persons and use the money to plug or replug a well.

(b) Paying money to the commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the commission is not admissible against the person in a suit in which the person's obligation to plug a well is an issue and introducing the evidence is a compulsory ground for mistrial.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.085. POSSESSION AND SALE OF EQUIPMENT TO COVER PLUGGING COSTS. (a) When the commission forecloses its lien under Section 89.083 on a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:

(1) entering into a plugging contract that provides that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(2) selling the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation at a public auction or a public or private sale.

(b) The commission shall assign separate costs to:

(1) removing well-site equipment;

(2) plugging the well; and

(3) transporting, storing, and disposing of the well-site equipment.

(c) The commission shall dispose of well-site equipment or

hydrocarbons under this section at a price or value that reflects the generally recognized market value of the equipment or hydrocarbons, with allowances for physical condition.

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil-field cleanup fund. The commission shall separately account for money and credit received for each well.

(e) A person who acquires well-site equipment or hydrocarbons under this section by sale or contract receives a clear title, free of all prior legal or equitable claims of whatever nature, whether perfected or inchoate.

(f) Not later than the 30th day after the date well-site equipment or hydrocarbons are disposed of under this section, the commission shall mail a notice by first class mail to the operator of the well at the address last reported to the commission as required by Section 91.142 of this code and commission rules and, on request, to any lienholder or nonoperator.

(g) The notice required by Subsection (f) of this section must include:

- (1) the lease name;
- (2) the well number;
- (3) the county in which the well is located;
- (4) the abstract number of the property on which the lease is situated;
- (5) the commission lease or gas well identification number or drilling permit number;
- (6) a list of the property disposed of under this section; and
- (7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

- (1) the lease name;
- (2) the well number;
- (3) the county in which the well is located;
- (4) the commission lease or gas well identification number or drilling permit number; and
- (5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(i) The commission shall publish the notice required under Subsection (h) of this section in a newspaper of general circulation in the county in which the lease is located. A single notice may contain the information required for more than one well and lease. A notice given under this section following the plugging of a well may be combined with a notice given under Section 91.115 of this code following the cleanup of a site or facility.

Added by Acts 1985, 69th Leg., ch. 715, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1989, 71st Leg., ch. 755, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 515, Sec. 4, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1233, Sec. 15, eff. Sept. 1, 2001.

Sec. 89.086. CLAIMS AGAINST THE OIL-FIELD CLEANUP FUND. (a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 of this code may make a claim against the oil-field cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(b) The commission shall adopt a form on which a person may file a sworn claim with the commission.

(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission foreclosed its statutory lien under Section 89.083.

(d) The commission may require a person to include with a claim documentation that substantiates the claim or to disclose whether the claimant was an operator or nonoperator of the well.

(e) The commission may set a hearing to receive evidence on a claim filed under this section. The commission shall notify the



claimant of the date, time, and place of a hearing.

(f) If the commission holds a hearing, the commission shall issue:

- (1) a decision on the claim;
- (2) a statement of findings of fact that includes the substance of the evidence heard; and
- (3) the conclusions of law that support the decision.

(g) The commission shall consider the validity of claims in the order in which the claims are filed.

(h) The commission shall suspend an amount of money in the oil-field cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) of this section prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil-field cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil-field cleanup fund in the manner provided by Subsection (j) of this section.

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil-field cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil-field cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil-field cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil-field cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil-field cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

(l) A person who informs a potential claimant that the potential claimant may be entitled to file a claim under this section or who files a claim on behalf of a claimant may not contract for or receive from the claimant for services an amount greater than 10 percent of the paid claim.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.  
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 16, eff. Sept. 1, 2001.

Sec. 89.087. JUDICIAL REVIEW OF COMMISSION DECISIONS; IMMUNITY FROM SUIT AND LIABILITY. (a) A claimant aggrieved by the commission's decision on a claim may appeal the decision in a

district court of Travis County on or before the 60th day after the date the decision was issued. If the commission does not decide a claim by the 90th day after the date it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(b) Judicial review under this section is by trial de novo.

(c) No interest accrues on a claim before an appeal is filed under this section.

(d) Except to the extent permitted by this chapter, and notwithstanding any other provision of law, the commission, its employees or agents, and the State of Texas are immune from suit and from liability based on the disposition of well-site equipment or hydrocarbons in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

Sec. 89.088. RECORD OF REQUEST FOR NOTICE BY LIENHOLDER OR NONOPERATOR; FORM; FEE. (a) The commission shall maintain a record of a request for notice by a lienholder or nonoperator under Section 89.043(e) or 89.085(f) of this code for five years after the date on which the commission receives the request.

(b) The commission shall prepare a form for a request for notice. The commission shall require a person who requests notice to include on the form information that identifies the lease covered by the request.

(c) The commission may charge a filing fee for a request for notice not to exceed \$10 for each lease covered by the request.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

#### SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

Sec. 89.121. ENFORCEMENT BY COMMISSION. (a) In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule or order of the commission adopted under this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code.

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the state oil-field cleanup fund.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 7, eff. Sept. 1, 1991.

Sec. 89.122. APPEAL TO COURTS. Any person affected by the provisions of this chapter may sue to test the validity of any order adopted by the commission under this chapter in the same manner, on the same conditions, and to the same court or courts as prescribed for suits testing the validity of orders of the commission adopted under the general oil conservation statutes of this state.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.